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September 14, 2012

By CM/ECF

The Honorable Leonard Davis
200 W. Ferguson, Third Floor
Tyler, TX 75702

Re: Plaintiff's Response to Sakar's Letter Brief Requesting Permission to File a Motion for Summary Judgment of Non-Infringement in *AdjustaCam LLC v. Amazon.com, Inc., et al.* No. 6:10-cv-329-LED

Your Honor:

Sakar's request to file a Motion for Summary Judgment of Non-Infringement (Doc. No. 679) should be denied because such a motion would be a waste of the Court's valuable time and because it fails on the merits, including because there is a factual dispute over the single axis issue that precludes summary judgment and requires resolution by a jury.

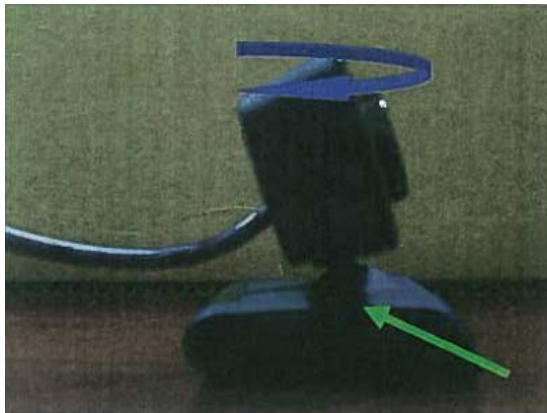
Allowing Sakar to file a motion for summary judgment of non-infringement would be a waste of the Court's time because there is a factual dispute over the single axis issue that precludes summary judgment and requires resolution by a jury. First, Sakar misrepresents AdjustaCam's infringement position in order to build up a straw man that it can purport to tear down. AdjustaCam's infringement position is fairly set forth in the chart at Exhibit D of Plaintiff's Infringement Contentions. In particular, as shown in these photos of Sakar's Kodak S-101 and T-130, the hinge member (noted with a green arrow) is rotatably attached to the camera such that "the camera rotates about a first axis of rotation (noted with a blue arrow) relative to the hinge member":



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and



“The axis of rotation is a single axis of rotation which is defined by a vector from the center of the connector through the central axis of the camera.” Plaintiff’s Infringement Contentions at Ex. D, pp. 2 & 8-9.

Sakar alleges that the rotatable connection between the hinge member and the camera is a “ball joint,” but in reality, and as described by Dr. Muskivitch in his expert reports and at his deposition, it is a severely constrained ball joint, which one of ordinary skill in the art (*e.g.*, an engineer) understands acts as two independent joints, each of which has an independent, single axis of rotation. *See, e.g.*, Muskivitch Deposition, pp. 70-71, 96, 148-55, 159, 297-98 & 304-307. For example, as stated by Plaintiff’s Expert Dr. Muskivitch (and



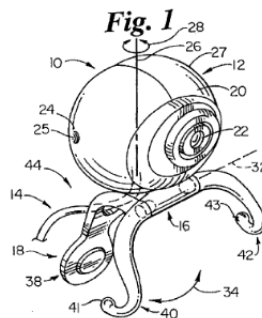
which is also evident from even a layperson's physical inspection):

(1) "From a standpoint of someone skilled in the art, I think that by looking at and examining the behavior of this device and the way the structure is put together, it has two distinct joints... So it's a combination of a biaxial joint or a two joint mechanism that has two independent and distinct, separate motions", *Id.*, p. 96;

(2) "It's a separate motion; it's a separate functional joint. *Id.*, pp. 149-50; and

(3) "If it's about the vector that would cause that one axis of rotation, yes. And it would be independent of any other rotations that you - that you would apply." *Id.* at 298.

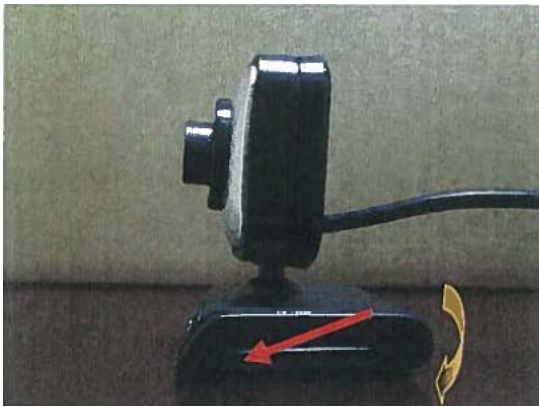
According to Sakar's invalid theory, the preferred embodiments of the patent-in-suit, *e.g.*,



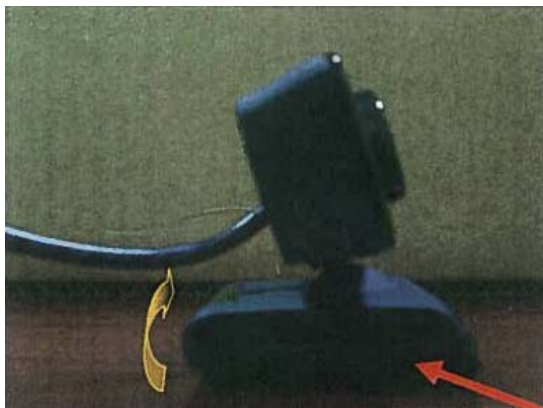
could not meet the claim limitations either, because such preferred embodiments have the *same* range of motion for the camera as Sakar's infringing device. This further illustrates the fallacy in Sakar's argument.



Sakar further alleges that its Kodak S-101 and T-130 do not infringe because there is no rotatable attachment between the hinge member and the support frame. Here again, Sakar has constructed a straw man in order to tear it down. AdjustaCam's infringement position is fairly set forth in the chart at Exhibit D to its Infringement Contentions. In particular, as shown in the photos of the S-101 and T-130, the support frame (noted with a red arrow) is hingedly attached¹ to the camera such that "the hinge member rotates about a second axis of rotation (noted with a yellow arrow), relative to the support frame":



and



¹ A hinged attachment is one type of rotatable attachment. Thus, rotatable attachments are inclusive of hinged attachments.



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“This axis of rotation is by the axis of the hinge connection to the support frame. Thus, it is a single axis of rotation.” Plaintiff’s Infringement Contentions at Exhibit D, p. 2.

In short, Sakar’s request to file a motion for summary judgment should be denied because its proposed motion lacks merit and would only be a waste of the Court’s valuable time. In particular, Sakar’s complaints about non-infringement relative to hinge members and axes of rotation involve a “battle of the experts” that the jury must resolve, or at a minimum, a factual dispute over the joint(s) in question that the jury must resolve.

Sincerely,

CEPIP

A handwritten signature in black ink, appearing to be 'J. Edmonds', written in a cursive style.

John J. Edmonds

cc: Defense Counsel (via CM/ECF).